

**Introduced by Senator Margett**

January 30, 2003

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An act to amend Sections 3400 and 10129 of the Public Contract Code, relating to public contracting.

LEGISLATIVE COUNSEL'S DIGEST

SB 110, as introduced, Margett. Public contracts: contract specifications.

Existing law provides that a state agency, political subdivision, municipal corporation, district, or public officer responsible for letting public works contracts may not draft bid specifications in a manner that limits the bidding to any one concern or product, except under certain circumstances. Existing law authorizes a bid specification of a certain product if the awarding authority makes a finding that a particular material or service is designated by a brand or trade name, either to make a field test or to match a material or service in use on a particular public improvement.

This bill would also authorize a bid specification of a certain product if the awarding authority makes a finding that a particular material or service is designated by a brand or trade name in order to: (1) Obtain a genuinely necessary and unique item that is only available from one source, (2) Obtain an item under circumstances in which competition is completely unavailing, or (3) Respond to a local or state declared emergency.

This bill would declare that the changes made by this bill codify existing California case law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 3400 of the Public Contract Code is amended to read:

3400. (a) No agency of the state, nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification ~~lists at least two brands or trade names of comparable quality or utility and~~ is followed by the words “or equal” so that bidders may furnish any equal material, product, thing, or service. ~~In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. In those cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the specifying agency, it may list only one.~~ Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of “an equal” item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(b) Subdivision (a) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for ~~either~~ any of the following purposes:

(1) In order that a field test or experiment may be made to determine the product’s suitability for future use.

(2) In order to match other products in use on a particular public improvement either completed or in the course of completion.

(3) *In order to obtain a genuinely necessary and unique item that is only available from one source.*

(4) *In order to obtain an item under circumstances in which competition is completely unavailing.*

1 (5) (A) *In order to respond to an emergency declared by a local*  
2 *agency, but only if the declaration is approved by a four-fifths vote*  
3 *of the governing board of the local agency issuing the invitation*  
4 *for bid or request for proposals.*

5 (B) *In order to respond to an emergency declared by the state,*  
6 *a state agency, or political subdivision of the state, but only if the*  
7 *facts setting forth the reasons for the finding of the emergency are*  
8 *contained in the public records of the authority issuing the*  
9 *invitation for bid or request for proposals.*

10 SEC. 2. Section 10129 of the Public Contract Code is  
11 amended to read:

12 10129. (a) Notwithstanding Section 3400, no agency of the  
13 state charged with the letting of contracts for the construction,  
14 alteration, or repair of public works may draft or cause to be  
15 drafted specifications for bids, in connection with the  
16 construction, alteration, or repair of public works, (1) in a manner  
17 that limits the bidding, directly or indirectly, to any one specific  
18 concern, or (2) calling for a designated material, product, thing, or  
19 service by specific brand or trade name unless the specification  
20 ~~lists at least two brands or trade names of comparable quality or~~  
21 ~~utility and~~ is followed by the words “or equal” so that bidders may  
22 furnish any equal material, product, thing, or service. ~~In applying~~  
23 ~~this section, the awarding authority shall, if aware of an equal~~  
24 ~~product manufactured in this state, name that product in the~~  
25 ~~specification. In those cases involving a unique or novel product~~  
26 ~~application required to be used in the public interest, or where only~~  
27 ~~one brand or trade name is known to the awarding authority, it may~~  
28 ~~list only one.~~ Specifications shall provide a period of time prior to  
29 or after, or prior to and after, the award of the contract for  
30 submission of data substantiating a request for a substitution of  
31 “an equal” item. If no time period is specified, data may be  
32 submitted any time within 35 days after the award of the contract.

33 (b) Subdivision (a) is not applicable if the awarding authority,  
34 or its designee, makes a finding that is described in the invitation  
35 for bids or request for proposals that a particular material, product,  
36 thing, or service is designated by specific brand or trade name for  
37 ~~either~~ any of the following purposes:

38 (1) In order that a field test or experiment may be made to  
39 determine the product’s suitability for future use.

1 (2) In order to match other products in use on a particular public  
2 improvement either completed or in the course of completion.

3 (3) *In order to obtain a genuinely necessary and unique item*  
4 *that is only available from one source.*

5 (4) *In order to obtain an item under circumstances in which*  
6 *competition is completely unavailing.*

7 (5) *In order to respond to an emergency declared by the state,*  
8 *a state agency, or political subdivision of the state, but only if the*  
9 *facts setting forth the reasons for the finding of the emergency are*  
10 *contained in the public records of the authority issuing the*  
11 *invitation for bid or request for proposals.*

12 SEC. 3. The amendments made by this act to subdivision (b)  
13 of Sections 3400 and 10129 of the Public Contract Code are  
14 intended to codify, and not to change the application of, existing  
15 California case law.

